



Lyrical Care Cloud Service Agreement

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LyricalCare

Lyrical Care Pty Ltd

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Terms of Service

- A. “**Whistle**” is a communications product owned by Lyrical Care.
- B. By using **Whistle**, you agree to be bound by these terms of service (“these **Terms of Service**” or this “**Agreement**”).
- C. If you do not agree to these Terms of Service or to any other portion of this Agreement you must not use Whistle.
- D. “**You**” means you individually or the entity that you represent (and, as applicable, your Users). If you are entering into this Agreement for an entity, you represent that you have the authority to bind that entity.
- E. “**Lyrical Care**”, “**we**”, or “**us**” means **Lyrical Care Pty Ltd**.
- F. Clause references are to the clauses of these Terms of Service.
- G. This Agreement takes effect when you first use Whistle or when your Order is accepted, whichever is earlier, and will remain in effect during the relevant Subscription Term or until terminated as specified in this Agreement.

1 Lyrical Care’s Cloud Service Offering – Whistle

1.1 Generally

We may deliver Whistle with the assistance of our affiliates and suppliers. We will remain responsible to you for delivery of Whistle.

1.2 Use of Whistle

- (a) You may use Whistle only:
 - (i) during the Subscription Term;
 - (ii) for your own benefit; and
 - (iii) in accordance with this Agreement.
- (b) To access Whistle you must register by providing accurate and complete information, and be allocated an authorised account by us with Login Credentials. You must keep your registration information accurate and complete during the term of this Agreement.
- (c) You are responsible for:
 - (i) any access of Whistle that occurs under your Login Credentials;
 - (ii) your Content; and
 - (iii) your Users’ compliance with this Agreement.
- (d) If you become aware of any User’s or End User’s violation of this Agreement you must promptly suspend that User’s or End User’s access to Whistle and notify us immediately.
- (e) If you believe your account has been compromised, including any unauthorised access to or use or disclosure of any account information, passwords, user names, or Login Credentials, you must notify us as soon as possible by submitting a Severity 1 Service Request via 1-800-WHISTLE or support@lyricalcare.com.
- (f) You may receive hardware and/or software from us, incidental to your use of Whistle, which must be installed in your on-premises environment to enable Whistle. You may use that hardware and software only:



- (i) in connection with your use of Whistle;
 - (ii) for the Subscription Term; and
 - (iii) in accordance with this Agreement,
- and you must return it to us immediately, if requested to so.
- (g) If we reasonably believe a problem with Whistle may be attributable to Your Content or to your use of Whistle, you must cooperate with us to identify the source of the problem and to resolve the problem.

1.3 Monitoring

- (a) We will monitor and collect configuration, performance, and usage data relating to your use of Whistle:
- (i) to facilitate delivery of Whistle, such as:
 - (A) tracking entitlements;
 - (B) providing support;
 - (C) providing reporting;
 - (D) monitoring the performance of any hardware installed to enable nurse call messages to be sent from your nurse call system(s) to Whistle;
 - (E) monitoring the performance, integrity, and stability of Whistle's infrastructure; and
 - (F) preventing or addressing service or technical issues, and
 - (ii) to improve our products and services, and your experience. You must not interfere with that monitoring.
- (b) We will not access Your Content except as necessary to provide Whistle and Whistle reporting functionality.
- (c) You consent to such monitoring and collection of data.

1.4 Evaluation Use

- (a) If you use any Whistle Evaluation Service, the terms of this clause govern that use.
- (b) You may use an Evaluation Service on condition that:
- (i) Your use is for internal testing and evaluation or trial purposes only;
 - (ii) Use is for a period of 1 month unless we specify otherwise;
 - (iii) You will not have access to the Evaluation Service or to any data or Content in the Evaluation Service after your authorised use period ends;
 - (iv) We may modify or terminate an Evaluation Service at any time; and
 - (v) Your use comes with no warranty or indemnity from us, nor liability to you, in relation to such use.

1.5 Open Source Software

- (a) You may be accessing open source software when you use Whistle. The open source software you access, as well as open source software that you may interact with when using Whistle and that we are required to disclose to you, is made available under the applicable open source licences.



- (b) Open source software embedded in Whistle will not be deemed to be “Third-Party Content”. All provisions in these Terms of Service applicable to Whistle (e.g. our warranty, liability, indemnification, and other obligations) will prevail over any conflicting terms set forth in any open source software licence otherwise applicable to that open source software.

1.6 Optional Feedback

You may provide comments and suggestions regarding Whistle, but you are not required to do so. If you provide comments or suggestions, we may use that feedback without restriction, and you hereby irrevocably assign to us all right, title, and interest in and to that feedback. Subject to the preceding sentence regarding any feedback you provide, providing any comments and suggestions does not grant us any rights in your Content or your intellectual property.

1.7 Modifications

- (a) We may from time-to-time:
 - (i) modify Whistle and/or this Agreement, or
 - (ii) cease providing Whistle.
- (b) Any changes will become effective on the date published or as we may notify you, but in no case less than 30 days after the date we publish notice of those changes or modifications (except for new features or functionality, which may take effect immediately).
- (c) Your continued use of Whistle after the effective date of any change will be deemed acceptance of the modified Whistle and/or this Agreement.
- (d) If we make a material, detrimental change to Whistle or this Agreement, we will notify you prior to the effective date of that change.
 - (i) If you elect to terminate this Agreement because of such change, you must notify us not later than 30 days after the date of our notice.
 - (ii) If you so terminate this Agreement, the termination will be effective as of:
 - (A) the date we receive your notice of termination; or
 - (B) any later date specified in your notice, provided that the effective termination date must not be more than 90 days after the date on which we receive your notice, unless agreed otherwise.
 - (iii) You will be responsible for all Fees incurred prior to the effective date of any such termination.
 - (iv) If you so terminate, we will refund any prepaid Fees for Annual Access Charges (**AAC**) prorated as of the effective date of the termination.
 - (v) If you so terminate, we will not refund any Installation Fees.
 - (vi) Termination and refund is your sole and exclusive remedy if we make a material, detrimental change to Whistle or to this Agreement.

1.8 Nurse Call Providers

- (a) Your Facility’s nurse call messages are passed into Whistle from your nurse call system(s) via a hardware device and/or software program that Lyrical Care provides. Lyrical Care will monitor and manage this connectivity proactively. Lyrical Care is not responsible for the availability or ability of the nurse call system to send messages into Whistle.
- (b) Lyrical Care does not manufacture or sell Nurse Call.



1.9 Smart Device Selection

- (a) Lyrical Care has tested a range of devices to substantiate compatibility of Whistle on them. The choice and procurement of Smart Devices resides with You. Lyrical Care is not responsible for the performance of Smart Devices in relation to Whistle or any other application that may be used on these devices. Devices over 3 years of age are not recommended for Whistle.
- (b) Lyrical Care does not manufacture or sell Smart Devices.

1.10 WiFi Vendor, Design and Coverage

- (a) Lyrical Care does not supply, design or recommend WiFi solutions. Voice grade designed WiFi is preferable to deploy Whistle. Whistle utilises both WiFi and 4G/5G technology for coverage. To utilise 4G/5G coverage, each Smart Device would require a data SIM to be installed in each device where 4G/5G coverage is required.
- (b) Lyrical Care does not provide WiFi or data SIMs.

1.11 Whistle Phone Charging Solution

- (a) Lyrical Care will supply a phone charging solution as part of our installation. This is to assist the Smart Phone devices have a place to reside, are neat and tidy and can be charging when not in use. We will provide the solution with sufficient charging bays to cover the maximum number of smart phones allocated to the use of Whistle.
- (b) You are responsible for cleaning of the phone charging solution to ensure it is and remains virus free when delivered in an ongoing basis.
- (c) You are responsible for any installation of the phone charging solution.
- (d) Lyrical Care does not warrant the performance of the charging solution beyond 1 year and we do not carry any liability for malfunction, overheating or fire that may result from the supplied phone charging solution.
- (e) Replacement units and components for the phone charging solution can be purchased from Lyrical Care if-and-when required. Please email account.manager@lyricalcare.com if replacement or additional phone charging solution components are required for a quote.

1.12 Whistle Wallets

- (a) Lyrical Care will supply Whistle Wallets as part of our installation. This is to assist in the use of the Smart Phones, enabling them to operate relatively hands free. We will provide 75 Whistle Wallets for every 100 beds.
- (b) You are responsible for cleaning of the Whistle Wallets to ensure they remain virus free, both when delivered and in an ongoing basis.
- (c) Replacement units and additional Whistle Wallets can be purchased from Lyrical Care if-and-when required. Please email account.manager@lyricalcare.com and advise how many units are required for a quote.

2 Data Protection and Security

- (a) You are solely responsible for ensuring that Whistle and its security is appropriate for Your Content and your intended use.
- (b) You are responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity, and security of Your Content. Those steps include:



- (i) controlling access you provide to your Users;
 - (ii) controlling access to your Smart Devices;
 - (iii) managing your Smart Devices and any Mobile Device Management (**MDM**) software you utilise to do so; and
 - (iv) configuring Whistle appropriately.
- (c) You are responsible for providing any necessary notices to Users and obtaining any legally required consents from Users regarding their use of Whistle.

3 Acceptable Use

3.1 General Restrictions

You must not:

- (a) resell or grant access to Whistle to another Aged Care provider; or
- (b) use Whistle:
 - (i) in a way prohibited by law or that would cause you or us to be out of compliance with applicable law;
 - (ii) to violate any rights of others;
 - (iii) to try to gain unauthorised access to, test the vulnerability of, or disrupt Whistle or any other service, device, data, account, or network;
 - (iv) in a way that could harm Whistle or impair anyone else's use of it; or
 - (v) in a way intended to work around Whistle's technical limitations, recurring Fees calculation or usage limits.

3.2 Content Restrictions

You must not upload into Whistle any Content that:

- (a) may create a risk of harm or any other loss or damage to any person or property;
- (b) may constitute or contribute to a crime or a tort;
- (c) includes any data that is illegal, unlawful, harmful, pornographic, defamatory, infringing, or invasive of personal privacy or publicity rights; or
- (d) contains any data that you do not have a right to upload into Whistle.

3.3 Uploading Content

You acknowledge that uploading Your Content to Whistle does not constitute a disclosure of Your Content to us.

4 Intellectual Property Ownership

4.1 Ownership of Whistle

- (a) We own all right, title, and interest in and to Whistle and any related Lyrical Care Software, including all improvements, enhancements, modifications, and derivative works of them, and all Intellectual Property Rights in all of them. This includes any information we collect and analyse about your use of Whistle.



- (b) Your rights to use Whistle are limited to those expressly granted in this Agreement. No other rights are implied with respect to Whistle, any related Lyrical Care Software, or any related Intellectual Property Rights of Lyrical Care.

4.2 Ownership of Your Content

You retain all right, title and interest in and to Your Content and all Intellectual Property Rights in Your Content. Our rights to access and use Your Content are limited to those expressly granted in this Agreement.

5 Orders, Payment, and Taxes

5.1 Orders Generally

- (a) You must pay to us all charges you incur for your use of Whistle.
- (b) Orders are not binding until we accept them. An Order will be deemed accepted when we deliver your access to Whistle via Login Credentials to the email address associated with your account. We are not required to provide access to Whistle until you provide all information we require for processing your Order and provisioning Whistle.
- (c) All Orders are non-refundable and non-cancellable except as expressly provided in this Agreement. Any refunds to which you are entitled under this Agreement will be remitted directly to You.
- (d) If you pay for Whistle via credit card, you will be subject to any additional terms presented to you by our third-party credit card payment processor, which will be the merchant of record for that transaction.

5.2 Direct Orders

If you place an Order directly with Lyrical Care, then, unless agreed otherwise:

- (a) charges you incur for using Whistle will be governed by the applicable price list at the time of invoicing;
- (b) you must pay all Fees and charges no later than 30 days after the date of invoice unless otherwise agreed;
- (c) Orders must be received either on your Purchase Order, a signed Lyrical Care Quote or by payment of a correct invoice, that evidences your purchase of Whistle, and signed by someone with the authority to do so; and
- (d) if your company requires our invoice reference your Purchase Order number, then Your Purchase Order number must be provided with your order. If your company does not require a Purchase Order number referenced, please indicate Not Applicable or N/A on the signed Lyrical Care Quote.

5.3 Reseller Orders

- (a) Lyrical Care will invoice the Reseller promptly if Whistle is purchased via the Reseller following receipt of your Order by Lyrical Care from the Reseller.
- (b) Your Payment Terms and Conditions for Whistle are between you and the Reseller.

5.4 Lyrical Care Payment Terms

- (a) Payment is due within thirty (30) days of the date of the invoice. However, if your normal payment processes require more time, for example an invoice presented in a particular month will be paid the following month, then this is acceptable.



- (b) Pricing for Whistle unless otherwise stated is exclusive of GST.

5.5 Price Changes

Lyrical Care reserves the right to amend pricing for Installation and AAC. Any such price change will not be retrospective and will not apply to Orders already accepted.

Any change to the AAC will be communicated to and need to be accepted by the customer.

6 Temporary Suspension

6.1 Generally

- (a) We may, at our option, suspend your use of Whistle if:
 - (i) you are in breach of this Agreement (other than payment) and do not cure that breach within 10 days after we notify you of that breach;
 - (ii) any payment is not received when due; or
 - (iii) we suspect fraud or abuse.
- (b) We will give you notice before suspending your use of Whistle.
- (c) We will promptly reinstate your access to Whistle once we have determined that the issue causing the suspension has been resolved.

6.2 Effect of Suspension

You will remain responsible for all Fees incurred before, during and after any suspension.

7 Termination

7.1 Generally

Subject to this clause, you have the right to use Whistle during the applicable Subscription Term. You may stop using Whistle at any time, but you will remain liable for all Fees and charges otherwise due during the applicable Subscription Term.

7.2 Termination for Cause

- (a) We may, at our option, terminate this Agreement effective immediately upon written notice to you:
 - (i) if we have the right to suspend under Clause 6.1 (“Temporary Suspension; Generally”); or
 - (ii) to comply with applicable law.
- (b) Subject to 7.2(a) immediately above, either you or we may terminate this Agreement immediately upon written notice to the other party to that effect, if that party:
 - (i) commits a breach of this Agreement and fails to cure such breach within 30 days of notice of the breach; or
 - (ii) commits a material breach of this Agreement that cannot be cured; or
 - (iii) terminates or suspends its business.

7.3 Termination for Insolvency

Either party may terminate this Agreement effective immediately upon sending the other party notice if that party:



- (a) becomes insolvent, admits in writing its inability to pay its debts as they fall due, or makes an assignment for the benefit of creditors; or
- (b) becomes subject to control of a trustee, receiver, or similar authority, or to any bankruptcy or insolvency proceeding.

7.4 Effect of Termination

- (a) Upon termination of this Agreement for any reason:
 - (i) you must stop using Whistle; and
 - (ii) you must return or, if we request, destroy, any Confidential Information of Lyrical Care in your possession or under your control (other than information that must be retained pursuant to law).
- (b) Deletion of any Content remaining in Whistle will occur within 30 days of termination. As between you and us, you are responsible for ensuring that you have necessary copies of all Your Content you may wish to retain prior to the effective date of any termination.
- (c) Except to the extent you or we are permitted to terminate this Agreement pursuant to Clauses 1.7 (“Modifications”), 7.2 (“Termination for Cause”), any termination of this Agreement will not entitle you to any refunds, credits, or exchanges, and you will be liable for all Fees incurred as of the effective termination date.
- (d) If we terminate this Agreement prior to expiration of a Subscription Term pursuant to Clause 7.2, you will be liable for all Fees due with respect to Whistle for the remainder of the then-current Subscription Term.

8 Lyrical Care Support

8.1 Lyrical Care Support

- (a) We will provide product support to you for Whistle. We provide remote support via the telephone or where permitting, remote access via video or teleconferencing, training videos for End Users that you may place on your Intranet and in-application help facilities within Whistle. We will not provide support for Your Content to your End Users.
- (b) The support provided includes:
 - (i) Business hours support for all issues;
 - (ii) Fast response times for Critical (Severity 1) issues defined as “System Down”;
 - (iii) Unlimited number of support requests;
 - (iv) Remote Support via phone or remote access if available;
 - (v) Online access to FAQs, online videos, documentation and technical resources, knowledge base, discussion forums; and
 - (vi) Online access to product updates and upgrades.

8.2 Whistle Support

Lyrical Care’s Product Support is designed with your production environments in mind. Our support staff are available to provide you access to our expertise. We are committed to delivering a high level of support.



Lyrical Care Product Support		
Hours of Operation	08:00 – 20:00 AEST Hours / Day 5 Days / Week Outside of these hours service requests logged via Email	
Length of Service	Current Annual Access Charge (AAC) Whistle Subscription;	
Online access to product updates?	Yes	
Product Supported	Whistle	
Method of Access	Telephone / Web / Email	
Response Method	Telephone / Email	
Remote Support?	Yes	
Access to Lyrical Care Discussion Forums and Knowledge Base?	Yes	
Max Number of Technical Contacts per Contract	3 per physical site, this includes multi-building sites	
Number of Support Requests	Unlimited	
Target Contact Response Times	Critical (Severity 1)	30 minutes or less
	Major (Severity 2)	4 business hours
	Minor (Severity 3)	1 business day
	Cosmetic (Severity 4)	5 business days
Business Hours	Monday – Friday	
Account Manager Contact	account.manager@lyricalcare.com 1-800-WHISTLE (1-800-944-785)	
Weekends and After Hours	Contact via 1-800-WHISTLE (1-800-944-785) or via email: support@lyricalcare.com	

9 Warranties

9.1 Limited Warranty: Duration and Remedy

- (a) We warrant that Whistle will perform as specified. We aim to have a service level availability percentage of 99.9%. We will work with you to restore Whistle in the event of an outage that impacts your business. At no time will us not meeting the service level result in a refund or credit for Whistle.
- (b) The aggregate liability (excluding indirect damages, for which we expressly disclaim all liability) of Lyrical Care Pty Ltd for any claim arising from your use of Whistle will not exceed 12 months, i.e. the AAC.

9.2 Disclaimer

OTHER THAN THE LIMITED WARRANTY SET FORTH IN CLAUSE 9.1, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE, FOR OURSELVES AND ON BEHALF OF OUR SUPPLIERS, DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND



NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, RELATING TO WHISTLE AND TO ALL MATERIALS OR SERVICES PROVIDED TO YOU UNDER THIS AGREEMENT, INCLUDING ANY THIRD-PARTY CONTENT. WE AND OUR SUPPLIERS DO NOT WARRANT THAT WHISTLE WILL BE UNINTERRUPTED OR FREE FROM DEFECTS OR ERRORS, OR THAT WHISTLE WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.

10 Indemnification

10.1 Indemnification by You

- (a) Subject to the remainder of this clause, you will:
 - (i) defend us against any Third-Party Claim; and
 - (ii) indemnify us from all fines, damages, and other costs finally awarded by a court of competent jurisdiction or a government agency, or agreed to in settlement.
- (b) We will:
 - (i) provide you with notice of any Third-Party Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve you of your indemnification obligations only to the extent that the delay prejudices you); and
 - (ii) reasonably cooperate in response to your requests for assistance.
- (c) You will have sole control over the defence of any Third-Party Claim. You may not, without our prior written consent, which will not be unreasonably withheld, conditioned, or delayed, settle any Third-Party Claim if that settlement obligates us to admit any liability or to pay any unreimbursed amounts to the claimant, or would affect Whistle or our business practices or policies.

11 Limitation of Liability

11.1 Disclaimer

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE OF WHISTLE, OR LOSS OF CONTENT FOR ANY REASON INCLUDING POWER OUTAGES, SYSTEM FAILURES, OR OTHER INTERRUPTIONS, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. THIS LIMITATION WILL APPLY REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE FOREGOING LIMITATION MAY NOT APPLY.

11.2 Cap on Monetary Liability

- (a) OUR LIABILITY FOR ANY CLAIM UNDER THIS AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAID OR PAYABLE TO US FOR YOUR USE OF WHISTLE GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.
- (b) THE LIMITATION OF LIABILITY IN THIS CLAUSE WILL NOT APPLY TO ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW.



11.3 Further Limitations

- (a) Our suppliers have no liability of any kind under this Agreement. You may not bring a claim directly against any of them under this Agreement. Our liability with respect to any Third-Party Content used or made available as part of Whistle is subject to this Clause.
- (b) You may not bring a claim under this Agreement more than twelve (12) months after the cause of action arises.

12 Confidential Information

12.1 Protection

- (a) Either party (the “**recipient**”) may use Confidential Information of the other party (the “**discloser**”) disclosed to it in connection with this Agreement solely to exercise its rights and perform its obligations under this Agreement or as otherwise permitted by this Agreement.
- (b) You and we will each use reasonable care to protect that Confidential Information in the same manner as we each protect our own Confidential Information of a similar nature, but in any event with not less than reasonable care.
- (c) The recipient may disclose the discloser’s Confidential Information only to the recipient’s employees, or to third parties, who have a need to know the Confidential Information for purposes of this Agreement, and who are under a duty of confidentiality no less restrictive than as specified in this clause.

12.2 Exceptions

The recipient’s obligations under Clause 12.1 with respect to any of the discloser’s Confidential Information will terminate if the recipient can show by written records that the information:

- (a) was, at the time of disclosure by the discloser, already rightfully known to the recipient without any obligation of confidentiality;
- (b) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions;
- (c) at the time of disclosure is, or through no fault of the recipient has become, generally available to the public; or
- (d) was independently developed by the recipient without access to or use of the discloser’s Confidential Information.

12.3 Injunctive Relief

Nothing in this Agreement limits either party’s ability to seek equitable relief.

13 General

13.1 Assignment

You may not assign or transfer this Agreement, in whole or in part, by operation of law or otherwise, without our prior written consent. Any attempted assignment or transfer of this Agreement without our consent will be void and will be a breach of this Agreement. Subject to these limitations, this Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

13.2 Notices

- (a) Any notice by us to you under this Agreement will be given:



- (i) by email to the email address associated with your account, if you have subscribed to this method of receiving notices; or
 - (ii) by posting on the Lyrical Care portal.
- (b) You must direct legal notices or other correspondence in writing to:

Lyrical Care
Lyrical Care Pty Ltd Level 3, 7 Macquarie Place, SYDNEY NSW 2000 Australia Attn: Lyrical Care Legal Counsel

13.3 Waiver

Waiver of a breach of any provision of this Agreement will not constitute a waiver of any later breach of that provision, or waiver of a breach of any other provision.

13.4 Severability

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in force to the extent feasible.

13.5 Compliance with Laws

You and we must each comply with all laws applicable to the actions contemplated by this Agreement.

13.6 Export Control

You acknowledge that Whistle is of Australian origin, is provided subject to the local laws, and may be subject to the export control laws of any other applicable country.

13.7 Force Majeure

Neither you nor Lyrical Care will be liable for any delay or failure to perform its obligations under this Agreement, except for your payment obligations, due to any cause beyond your or our reasonable control including labour disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, storms or other acts of nature, embargoes, riots, acts or orders of government, acts of terrorism, declared pandemics, or war.

13.8 Construction

The headings of clauses of these Terms of Service are for convenience and are not for use in interpreting these Terms of Service. As used in these Terms of Service, the word “including” means “including but not limited to”.

13.9 Language

This Agreement is in English, and the English language version governs any conflict with a translation into any other language.

13.10 Governing Law

If your billing address is in Australia, this Agreement is governed by the laws of the State of New South Wales and the federal laws of Australia. Conflict of law rules are expressly disclaimed.



13.11 Third Party Rights

Other than as expressly provided in this Agreement, this Agreement does not create any rights for any person who is not a party to it, and only persons who are parties to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in this Agreement.

13.12 Independent Parties

We and you are independent contracting parties, and this Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship between us. Neither you nor Lyrical Care, nor any of our respective affiliates, officers, directors, or employees, is an agent of the other for any purpose, nor has the authority to bind the other.

13.13 Order of Precedence

The terms of this Agreement will supersede any conflicting or additional terms and conditions of any Order or other purchasing-related document issued by you relating to any Order for Whistle.

13.14 Entire Agreement

This Agreement, as it may be modified from time-to-time is the entire agreement between you and Lyrical Care regarding its subject matter. This Agreement supersedes all prior or contemporaneous communications, understandings and agreements, whether written or oral, between you and Lyrical Care regarding its subject matter.

14 Definitions

- (a) **“AAC”** means “Annual Access Charge” for access to Whistle. AAC is calculated by taking the agreed and licensed bed number and multiplying it by the then per month rate times 12.
- (b) **“Account Information”** means information about you that you provide to us in connection with creation or administration of your account, including names, usernames, phone numbers, email addresses, and billing information associated with your account.
- (c) **“Confidential Information”** means your Login Credentials, and any non-public technical, business, or other information or materials disclosed or otherwise made available by either you or us to the other party regarding this Agreement or Whistle, that are in tangible form and labelled “confidential” or the like, or are provided under circumstances reasonably indicating confidentiality.
 - (i) Your Confidential Information does not, for purposes of this Agreement, include Your Content. If you disclose Your Content to us or if we access Your Content as permitted by this Agreement, including for purposes of providing support to you, we will use the same standard of care with respect to that data as we use to protect our own Confidential Information.
- (d) **“Content”** means any data, including all text, sound, video, or image files, and software (including machine images), or other information.
- (e) **“D&S”** means “Development and Support” and is a Fee of 20% of the then current AAC Fee. D&S is applicable from the start of Year 2 and is charged annually in advance.
- (f) **“End User”** means a user of Whistle who is not your employee, or onsite contractor or agent. End Users include your customers (e.g. persons to whom you provide a service, and with whom you are in a commercial contractual relationship).
- (g) **“Evaluation Service”** means a pilot of Whistle. Any Evaluation Service is no more than 1 month.



- (h) **“Fees”** mean the Fees specified in Schedule 1 and Schedule 2.
- (i) **“Infringement Claim”** means any claim by a third party that Whistle infringes any patent, trademark, or copyright of that third party, or misappropriates a trade secret of that third party (but only to the extent that the misappropriation is not a result of your actions), under the laws of:
 - (i) the United States;
 - (ii) Canada;
 - (iii) European Economic Area member states;
 - (iv) Australia; or
 - (v) New Zealand,to the extent that your instance of Whistle is provisioned in a data centre located in the applicable country.
- (j) **“Installation Fees”** are Fees charged by Lyrical Care for installation and configuration of Whistle. Items included are nurse call integration, supply of Whistle Wallets and support during installation of Whistle. Installation Fees are charged as a price per bed and are non-refundable under any circumstances.
- (k) **“Intellectual Property Rights”** means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.
- (l) **“Law”** includes any statute, ordinance, regulation, or governmental requirement, order, or decree.
- (m) **“Login Credentials”** means any passwords, authentication keys, or security credentials that enable your access to and management of Whistle.
- (n) **“Lyrical Care Software”** means the Lyrical Care Cloud Service Offering, known as Whistle.
- (o) **“Lyrical Care Support”** means Lyrical Care’s Product Support, refer to clause 8.
- (p) **“Order”** means Your Purchase Order or a signed Lyrical Care Quote or other document, that evidences your purchase of Whistle via the AAC method.
- (q) **“Quote Form”** is a Lyrical Care Quote Form which can be signed and returned as an Order on it’s own or referenced on your Customer Purchase Order.
- (r) **“Service Description”** means the then-current version of Whistle.
- (s) **“Service Offering”** means the Lyrical Care Cloud Service, Whistle specified in your Order.
- (t) **“Smart Device”** is an electronic device, generally connected to other devices or networks via different wireless protocols. Includes Smart Phones and Tablets.
- (u) **“Subscription Term”** means the initial term of your authorised use of Whistle, as set forth in the applicable Order accepted by us, together with any renewal terms (if applicable). The initial term begins on the earlier of:
 - (i) the date on which you start using Whistle; or
 - (ii) the date you complete the registration process; or
 - (iii) as otherwise specified in the Order or in the applicable Service Description.

For purposes of any AAC, “Subscription Term” means the period during which you are using Whistle, for which you will be billed.



- (v) **“Taxes”** means any GST (Goods and Services Tax).
- (w) **“Third-Party Claim”** means any third-party claim or demand arising from or relating to:
 - (i) Your Content; or
 - (ii) your use of Whistle, including an Evaluation Service, in violation of this Agreement.
- (x) **“Third-Party Content”** means Content provided by a third party, that interoperates with Whistle including open source software.
- (y) **“User”** means any person who is authorised to access Whistle, or Your Content, directly under your Login Credentials, but does not include your End Users.
- (z) **“Whistle”** means Lyrical Care’s Cloud Service Offering known as Whistle.
- (aa) **“Your Content”** means Content uploaded into Whistle for processing, storage or hosting, by you or by any User, but does not include:
 - (i) Third-Party Content;
 - (ii) Account Information; or
 - (iii) data we collect as specified in Clause 1.3 (“Monitoring”).



Schedule 1 Fees

The Fees for Whistle are:

- The price for Whistle nominated by Lyrical Care at the time of Order:
 - The installation chargers; and,
 - an Annual Access Charge (**AAC**) Fee.
- An Installation Charge is applicable to all Orders including:
 - New Facility AAC; and
 - Expansion of existing AAC access.

Note 1 Fees for any of Lyrical Care's services for Whistle may increase from time-to-time. Fee increases will not be retrospective.

Note 2 If under Clause 7, access to Whistle is terminated with one month's notice, the remaining prorated AAC Fees may be refunded.

Schedule 2 Lyrical Care Cloud Service (Whistle) Rate Table

The table below represents the List Price for a single bed as at 04/06/2021 in AUD ex-GST.

- Pricing contained herein are only shown as exemplars. For current pricing you will need to request a Quote from Lyrical Care.

Annual Access Charge (AAC)			
Type	Licensed Bed Number	Rate \$	Total \$ ex GST
Whistle Installation	1	\$150.00 (per bed)	\$150.00 ex GST
Whistle Cloud Service	1	\$96.00 (Per Annum)	\$96.00 ex GST
Total Year 1			\$246.00 ex GST



Execution

EXECUTED as an agreement

Signed for and on behalf of)
Organisation:)
ABN:)
ACN:)
by its Authorised Representative:)

Signature of Authorised Representative

Name of Authorised Representative (please print)

Position of Authorised Representative

Date

Signed for and on behalf of)
Organisation: Lyrical Care Pty Ltd)
ABN: 86 633 247 686)
ACN: 633 247 686)
by its Authorised Representative:)

Signature of Authorised Representative

Andrew Barton

Name of Authorised Representative

Director

Position of Authorised Representative

Date

- Please sign and return this agreement in its entirety to account.manager@lyricalcare.com.
- A copy of the agreement signed by Lyrical Care will be provided to you in due course.